



New South Wales

Public Health (COVID-19 Care Services) Order (No 3) 2021

under the

Public Health Act 2010

I, Brad Hazzard, the Minister for Health, make the following Order under the *Public Health Act 2010*, section 7.

Dated 23 December 2021 (original order).

Time 4:02pm

As amended on 23 December 2021 and 25 February 2022.

Minister for Health

Explanatory note

The object of this Order is to repeal and remake the *Public Health (COVID-19 Care Services) Order (No 2) 2021*, which deals with the vaccination of aged care and disability services workers.

Editorial note

This is the order as amended by the *Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021* and the *Public Health Amendment (COVID-19 Care Services) Order (No 3) Amendment (No 1) Order 2022*.

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Public Health (COVID-19 Care Services) Order (No 3) 2021

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Part 1 Preliminary

1 Name of Order

This Order is the *Public Health (COVID-19 Care Services) Order (No 3) 2021*.

2 Definitions

- (1) The Dictionary in Schedule 1 defines words used in this Order.
Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.
- (2) Notes included in this Order do not form part of this Order.

3 Grounds for concluding that there is a risk to public health

It is noted that the basis for concluding that a situation has arisen that is, or is likely to be, a risk to public health is as follows—

- (a) public health authorities both internationally and in Australia have been monitoring and responding to outbreaks of COVID-19, which is a condition caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
- (b) COVID-19 is a potentially fatal condition and is highly contagious,
- (c) a number of cases of individuals with COVID-19 have been confirmed in New South Wales and other Australian jurisdictions, and there is an ongoing risk of continuing transmission of the virus in New South Wales,
- (d) residents of residential aged care facilities, persons with a disability and persons receiving aged care services, if infected with SARS-CoV-2, are more vulnerable to severe illness or death,
- (e) ensuring that employees of residential aged care facilities and other workers who come into contact with residents, persons with a disability or persons receiving aged care services, are vaccinated will reduce—
 - (i) the risk of infection, severe disease and death of the worker, and
 - (ii) the risk of transmission of infection from workers to residents, persons with a disability or persons receiving aged care services and other workers,
- (f) aged care and disability services are at risk without proportionate and appropriate mitigation strategies to protect the services.

3A Meaning of “appropriately vaccinated”

- (1) For this Order, a person is *appropriately vaccinated* if—
 - (a) the person has received at least 3 doses of a COVID-19 vaccine, or

- (b) the person—
 - (i) has received 2 doses of a COVID-19 vaccine, and
 - (ii) it is not after the later of the following—
 - (A) 12 April 2022,
 - (B) 6 weeks from the due date for the person’s third dose of a COVID-19 vaccine.
- (2) For subclause (1)(b)(ii)(B), the *due date* for a person’s third dose of a COVID-19 vaccine is the day that is 13 weeks after the person received the second dose of a COVID-19 vaccine.

Part 2 Vaccination of aged care and disability services workers

4 Introduction

This Part sets out the directions of the Minister about the vaccination of aged care and disability services workers.

5 Unvaccinated workers not to enter residential aged care facilities

- (1) A relevant worker for a residential aged care facility must not enter or remain on the premises of the facility unless the worker is appropriately vaccinated.
- (2) This clause does not apply to a person who enters a residential aged care facility to respond to—
 - (a) a medical emergency, or
 - (b) a non-medical emergency, for example, a fire, flooding or a gas leak.

6 Unvaccinated health practitioners and students not to enter residential aged care facilities

- (1) A health practitioner or student must not enter or remain on the premises of a residential aged care facility unless the health practitioner or student is appropriately vaccinated.
- (2) This clause does not apply to a health practitioner who enters a residential aged care facility to respond to a medical emergency.
- (3) To avoid doubt, this clause does not affect the requirement for a person to be vaccinated under clause 5.

7 Restrictions on visitors to residential aged care facilities

- (1) The operator of a residential aged care facility must not allow, for each resident of the facility, more than 2 persons to enter or remain on the premises of the residential aged care facility for the purpose of visiting the resident (*visitors*) in a 24-hour period.

Note— The operator of a residential aged care facility must consider the advice of the Chief Health Officer in relation to certain matters, including the management of visitors to the facility—see the *Public Health (COVID-19 General) Order (No 2) 2021*, clause 15.
- (2) The operator of the residential aged care facility may allow a maximum of 2 additional visitors for a resident under subclause (1) if each of the additional visitors is—
 - (a) under 12 years of age, and
 - (b) accompanied by a vaccinated visitor.
- (3) A visitor must not enter or remain on the premises of a residential aged care facility unless the visitor is a vaccinated visitor.
- (4) A visitor is not required to comply with subclause (3) if the operator of the residential aged care facility authorises the visitor to enter and remain on the premises for the purpose of visiting a resident who is at the end of life.
- (5) This clause does not apply to a person who enters and remains on the premises to provide a health service or professional or other service to the resident, including in the role of a student, and the person is not to be counted as a visitor.
- (6) For the purposes of this clause, a visitor is a *vaccinated visitor* if the visitor—
 - (a) has received at least 2 doses of a COVID-19 vaccine, and

(b) has received the second dose of the COVID-19 vaccine at least 14 days ago.

8 In-home and community aged care workers not to work unvaccinated

An in-home and community aged care worker must not do work as an in-home and community aged care worker unless the worker is appropriately vaccinated.

9 Disability services workers not to work unvaccinated

A person must not provide disability services unless the person is appropriately vaccinated.

10 Evidence of vaccination

- (1) The operator of a residential aged care facility must take all reasonable steps to ensure that a person subject to a direction under clause 5, 6 or 7(3) complies with the direction.
- (2) A person subject to a direction under clause 5, 6 or 7(3) must, if required to do so by the operator of a residential aged care facility, provide the operator with vaccination evidence.
- (3) The Minister directs that a responsible person for an in-home and community aged care worker or a person who provides disability services must take all reasonable steps to ensure that the worker or provider subject to a direction under clause 8 or 9 complies with the direction.
- (4) An in-home and community aged care worker or a person who provides disability services must, if required to do so by the responsible person for the worker or provider, provide the responsible person with vaccination evidence.

Part 3 Miscellaneous

11 Exemptions for medical contraindication

- (1) Clauses 5, 6, 7(3) and 10(2) do not apply to a person who—
 - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
 - (b) presents to the operator of the residential aged care facility a medical contraindication certificate issued to the person.
- (2) Clauses 8 and 9 do not apply to a worker who—
 - (a) is unable, due to a medical contraindication, to be vaccinated against COVID-19, and
 - (b) presents to the responsible person for the worker a medical contraindication certificate issued to the worker.
- (3) The Minister may, in writing and subject to the conditions the Minister considers appropriate, grant an exemption to this Order or specified provisions of this Order if the Minister is satisfied it is necessary to protect the health and well-being of persons.

11A Invalidated medical contraindication certificates

- (1) This section applies to a person (an *affected person*) if—
 - (a) the person presented a medical contraindication certificate under clause 11(1)(b) or (2)(b) or a corresponding provision of a prior Order, and
 - (b) the medical contraindication certificate was issued by a medical practitioner who subsequently becomes subject to a registration condition relating to the practitioner's ability to issue 1 or more types of medical certificates, including medical contraindication certificates.
- (2) An affected person who presented a medical contraindication certificate under clause 11(1)(b) or a corresponding provision of a prior Order must—
 - (a) on being notified by a the operator of a residential care facility that the person is an affected person, immediately leave the facility, and
 - (b) not enter a residential care facility, whether it is the facility referred to in paragraph (a) or a different facility, until the person presents a new medical contraindication certificate to the operator of the facility.
- (3) An affected person who presented a medical contraindication certificate under clause 11(2)(b) or a corresponding provision of a prior Order must, on being notified by a responsible person that the person is an affected person—
 - (a) immediately cease work in aged care or disability services, and
 - (b) not do work in aged care or disability services until the person presents a new medical contraindication certificate to a responsible person.
- (4) In this clause—

prior Order means the following—

 - (a) the *Public Health (COVID-19 Aged Care Facilities) Order 2021*,
 - (b) the *Public Health (COVID-19 Care Services) Order 2021*,
 - (c) the *Public Health (COVID-19 Care Services) Order (No 2) 2021*.

11B Issue of medical contraindication certificates

A medical practitioner must not issue a person a medical contraindication certificate unless the medical practitioner reasonably believes that, because of a specified

medical contraindication, the person cannot have any approved COVID-19 vaccine available in New South Wales.

11C Savings

Clause 11A, as inserted by the *Public Health Amendment (COVID-19 Medical Contraindication Certificates) Order 2021*, applies to a medical contraindication certificate issued before the commencement of the Order.

12 Repeal

The *Public Health (COVID-19 Care Services) Order (No 2) 2021* is repealed.

13 Savings

- (1) An act, matter or thing that, immediately before the repeal of the repealed Order, had effect under that Order continues to have effect under this Order.
- (2) Without limiting subclause (1)—
 - (a) an exemption granted by the Minister under the repealed Order and in force immediately before the commencement of this Order continues as if it were granted under this Order, and
 - (b) a delegation in force immediately before commencement of this Order given for a provision of the repealed Order continues to have effect for the corresponding provision of this Order.
- (3) In this clause—
repealed Order means the *Public Health (COVID-19 Care Services) Order (No 2) 2021*.

Schedule 1 Dictionary

Clause 2(1)

appropriately vaccinated—see clause 3A.

approved COVID-19 vaccine means a vaccine approved by the Therapeutic Goods Administration of the Commonwealth for use in Australia as a vaccine against COVID-19.

approved provider has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth.

Commonwealth-funded aged care service has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth.

COVID-19 vaccine means—

- (a) an approved COVID-19 vaccine, or
- (b) a vaccine, other than an approved COVID-19 vaccine, recognised by the Therapeutic Goods Administration of the Commonwealth as an appropriate vaccine against COVID-19 for incoming travellers to Australia.

Note. On the making of this Order, the recognised vaccines were specified in the document titled *COVID-19 vaccines not registered in Australia but in current international use – TGA advice on “recognition”*, published on the website of the Therapeutic Goods Administration of the Commonwealth and dated 27 September 2021.

disability services means services provided in person to a person with a disability including services funded or provided under—

- (a) the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, or
- (b) the Assisted School Travel Program of the Department of Education.

flexible care has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

health practitioner means a natural person who provides a health service, whether or not the person is registered under the *Health Practitioner Regulation National Law (NSW)*.

health service has the same meaning as in the *Health Care Complaints Act 1993*.

home care has the same meaning as in the *Aged Care Act 1997* of the Commonwealth.

in-home and community aged care worker means a person who provides flexible care, home care or a Commonwealth-funded aged care service, outside of a residential care setting, for or on behalf of a responsible person.

maintenance contractor means a person undertaking 1 or more of the following—

- (a) building work of a type listed in the *Home Building Regulation 2014*, clause 13,
- (b) specialist work of a type listed in the *Home Building Regulation 2014*, clause 14,
- (c) gardening and other maintenance to the grounds of the facility,
- (d) maintenance services of a type approved by the Chief Health Officer for the purposes of this definition.

medical contraindication certificate means a certificate issued by a medical practitioner—

- (a) in a form approved by the Chief Health Officer, and
- (b) certifying that, because of a specified medical contraindication, the worker cannot have any approved COVID-19 vaccine available in New South Wales,

but does not include a certificate issued by a medical practitioner—

- (c) whose registration under the *Health Practitioner Regulation National Law (NSW)* is subject to a condition relating to the issue of 1 or more types of medical certificate, including medical contraindication certificates, or
- (d) in contravention of clause 11B.

operator, of a residential aged care facility, means a person who controls or operates the facility.

relevant worker for a residential aged care facility means—

- (a) an employee of the operator of the facility, or
- (b) a person who provides services for the facility or for 1 or more residents of the facility under a contract or arrangement with a person, but not including—
 - (i) a maintenance contractor, or
 - (ii) a person who provides services to a resident of the facility under a contract or arrangement with the resident, or
 - (iii) a student.

residential aged care facility means a facility at which the following services are provided to a person in relation to whom a residential care subsidy or flexible care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth—

- (a) accommodation,
- (b) personal care or nursing care.

responsible person for an in-home and community aged care worker means—

- (a) an approved provider for whom a flexible care subsidy or home care subsidy is payable under the *Aged Care Act 1997* of the Commonwealth, or
- (b) a service provider of a Commonwealth-funded aged care service within the meaning of the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth, delivering services outside of a residential aged care setting.

responsible person for a person providing disability services means—

- (a) if the services are carried out on premises, other than residential premises—the occupier of the premises, or
- (b) otherwise—the person who employs or engages the person to provide disability services.

student means a person undertaking a clinical placement or work experience, however described, at a residential aged care facility.

the Act means the *Public Health Act 2010*.

vaccination evidence means evidence from the Australian Immunisation Register kept under the *Australian Immunisation Register Act 2015* of the Commonwealth that the worker has had 2 or more doses of a COVID-19 vaccine.

Example— An online immunisation history statement, COVID-19 digital certificate from the Australian Immunisation Register or information displayed on the Service NSW mobile phone application.